



**COMMUNITY DEVELOPMENT
DEPARTMENT**

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

SEPTEMBER 9, 2008

PRESENT: Acevedo, Koepp-Baker, Davenport, Escobar, Lyle, Mueller, Tanda

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Planner (SP) Tolentino, Senior Civil Engineer (SCE) Creer, and Minutes Clerk Johnson.

Chair Koepp-Baker called the meeting to order at 7:01 p.m., inviting all present to join in pledge of allegiance to the U.S. flag.

Chair Koepp-Baker announced that the 6:00 p.m. workshop, which centered on Accelerating Previously Approved Housing Projects, would have further discussion during agenda item 3.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Koepp-Baker opened the floor to public comment for matters not appearing on the agenda.

With no one present indicating a wish to address items not appearing on the agenda, the public hearing was closed.

PRESENTATION:

1) ALUC PUBLIC PRESENTATION ON SAN MARTIN AIRPORT COMPREHENSIVE LAND USE PLAN:

Walter Windus, Chair Santa Clara County Airport Land Use Commission (ALUC), and Mark Connolly, Santa Clara County Planning Department and staff to the ALUC were present to address the Commissioners, with Mr. Connolly giving an overview of the charge of the Airport Land Use Commission. Mr. Connolly also provided

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information regarding the proposed San Martin Airport Comprehensive Land Use Plan (CLUP), which is of interest to the City Officials and residents of Morgan Hill.

Mr. Connolly explained the following regarding the Airport Land Use Commissions:

- ◆ a State mandated commission since 1992
- ◆ purpose: provide for orderly development near airports
- ◆ 7 member commission, appointed locally
- ◆ duties: assist local agencies to assure compatible land uses around airports
- ◆ comprehensive plans include noise and safety elements
- ◆ purpose of CLUP will result in small impact to Morgan Hill ~~ only proposed development or redevelopment
- ◆ provides guidance for orderly growth
- ◆ 'Aviation easement' easement of air space protects air space for pilots and travelers

With assistance from PM Rowe, Mr. Connolly explained the Zoning nearby the airport in conjunction with the City limits and area of influence where the CLUP applies. Disclosure requirements at the sale of a house were discussed, as were hearings for rezone in the area.

Commissioners discussed with Mr. Connolly:

- * Sphere of Influence (SOI) could be rezoned to higher density
- * impact of CLUP on development
- * pattern of airplane takeoff/landing
- * noise contours not near incorporated area of Morgan Hill; not too close southern part of SOI
- * size of planes utilizing airport; potential for increased sizes
- * safety and noise levels
- * importance of 'green development'
- * development such shopping centers and stadiums not recommended in the airport influence area
- * FAA regulates height restrictions
- * need for someone in City employment to be designated to interact with Airport Commission
- * new house construction ~~ minimal fee for the aviation easement application
- * application generally a 'seamless process'

Mr. Connolly stressed the purpose of the CLUP was for protection of air space.

Chairman Windus addressed the Commissioners briefly, saying, "The problem is: everyone says 'We have no problems with the airport'. Moreover, indeed, there are no complaints. Then the house is sold. Disclosure does not take care of the complaints and concerns." Chairman Windus went on to tell of years of personally tracking the issues connected with real estate, disclosures, and protection.

Chairman Windus emphasized the CLUP is predicated on existing airports, as set by law and contains data for the airport layout plan and airport master plan.

Mr. Connolly said it has not been determined what the final airport expansion alternative the County is anticipated to accept. He noted:

- ◇ if a longer runway is recommended, business jets may be permitted to utilize the airport
- ◇ it is envisioned that very light jet (almost personal jets) would use the airport, and those by design are quieter than a Lear jet
- ◇ 72 jet aircraft operations per year are projected

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- ◇ Airport Master Plan adoption is anticipated within a 'couple of years'
- ◇ the Airport Commissioners are dependent on the County and take information to development plan

Commissioners discussed with the representatives the planned development, e.g., Math institute, known to Morgan Hill officials and asked the effects of that development.

Chairman Windus, who is also a consultant to other Airports, said he personally thinks there are sufficient contours extending out to the north and south. He added, "Because of the potential for larger jets, a recommendation may be to extend contours further out and with different configurations. That could result in 'not necessarily more noise to the east but in a straight line'."

Commissioner Tanda observed that when an Airport Master Plan Amendment is considered, there is an EIR completed to identify concerns, modifications are recommended with the level of scrutiny similar to installation of a toxic waste disposal site.

CONSENT CALENDAR:

MINUTES:

AUGUST 12 2008 COMMISSIONERS MUELLER/ACEVEDO MOTIONED TO APPROVE THE AUGUST 12, 2008 MINUTES WITH THE FOLLOWING REVISIONS:
Page 3, paragraph 1: Delete; duplication.
Page 3, paragraph 3 (add missing word): ... can *complete*
Page 5, paragraph 6 (add): *He asked, "Should the windows be opaque if the use is retail?"*
Page 6, paragraph 10:~~store~~ *story*
Page 6, (add) paragraph 11: *It was determined during discussion with Mr. King that the Planning Commission agreed by consensus to a three-foot front setback, with the Commissioners having noted that several differing sizes of setbacks had been considered.*
Page 7, paragraph 4: **THE MOTION PASSED (~~3-2-0-1~~) (4-2-0-1)**
Page 7, paragraph 8:~~designated~~ *designed*
Page 11, paragraph 2: **THE MOTION PASSED (~~6-1-1~~) (6-0-0-1)**
Page 13, paragraph 28: ...~~Parking~~ *Traffic* Study

THE MOTION PASSED (6-0-1-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: ESCOBAR; ABSENT: NONE.

PUBLIC HEARINGS:

2) UP-08-07: SPRING-MT. HOPE CEMETERY A request for approval of a conditional use permit to expand the existing 5.11-acre Mt. Hope Cemetery to approximately 11 acres. The cemetery is located on Spring Ave. opposite the intersection at Barnell Ave. in a PF, Public Facilities zoning district. A Mitigated Negative Declaration is proposed.

SP Tolentino presented the staff report, recalling for the Commissioners that at their July 22 meeting, a Conditional Use Permit (CUP) application was heard with much testimony from neighboring residents received. Since the applicant was not present at that meeting,

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the matter was continued to be heard at this time, SP Tolentino said. She called attention to the distributed staff report, noting that several options for action were contained within the report, and detailed the opportunity for differing scenarios for those options.

Noting it was not known if the applicant would be present at this meeting, Chair Koepp-Baker opened the public hearing to provide opportunity for comment by members of the audience.

James Habing, 129 Fourth St., Gilroy, was present to speak to the Commissioners, and noted he was a co-owner of the cemetery, and saying that he had not received notification of the previous meeting due to having been on vacation.

Mr. Habing said he and a partner had purchased the cemetery in 2004 and would like to have the cemetery become a success. Mr. Habing provided a detailed history of the cemetery operations, and noted that he and his brother operate a cemetery in Gilroy. Mr. Habing acknowledged that the concerns raised during the previous hearing were valid. "However," he said, "we thought we could use our crew from Gilroy to work here. The cemetery has always looked bad. It is a small cemetery and does about 50 burials per year. When we bought the property, we were told seven acres would be used for expansion as the existing site is 'either full or reserved'.

"You need to remember, the cemetery been there over 100 years. The five acres are just now filled. How long will it take to fill an additional seven acres?" Mr. Habing remarked. "We have been losing money the last three years. If we can't expand, we must close and walk away. We need help. A cemetery doesn't run just as a private entity. We are asking that we be allowed to expand graves three feet by eight feet, and that will mean going tot the west by 2 - 3 rows. There are no cities, which regulate cemeteries. We do think we can make this a good cemetery with a little help from the City:

- allow us to continue move few graves over three feet by eight feet
- waive use permit
- help with water costs
- set backs regulations addressed

We want to make this a good cemetery, but we need help. We want to be good neighbor."

Commissioner Lyle asked Mr. Habing to reiterate his request for assistance from the City. Mr. Habing responded,

- "We need expansion room - three feet by eight feet.
- The City should waive fees for the CUP.
- The City should waive water utility fees.
- The City should help with maintenance of cemetery: something to effect that a City crew completes once a month pick up {of trash, etc.)."

Mr. Habing went on to explain differences between 'endowment and non-endowment' areas of cemeteries. He also responded to questions regarding heights of stones and markers, and acknowledged that for more efficient upkeep, those that are flat 'work best'. Commissioners raised the issues which had been discussed with the public at the previous meeting:

- expansion area ~ upkeep

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- visual concerns
- landscaping
- smokers ~~ night visitors ~~ trash

Mr. Habing acknowledged he had not talked with residents in the neighborhood. He then commented, "We are losing money annually and we are not going to any more."

Chair Koepp-Baker asked Mr. Habing to detail the amounts of money which he was asking the City for, either waivers of fees or actual dollars for water. Commissioner Escobar asked: "In return for the City making concessions, do you have plans for putting money into the operation?" Mr. Habing responded, "We take care of the non-endowment area. We are putting in a well and irrigation system. We plan to make it look nice on a couple of acres."

The issue that the residents had spoken to at the prior meeting: drainage runoff was discussed with Commissioners expressing concern that expansion might add to the problem. Mr. Habing said the drainage issues 'goes both ways'. He added that increased problems of drainage probably would not occur for 'about 30 years'.

SP Tolentino explained the site review requirements. She added that regarding the drainage issue, a staff site visit had been completed and it appeared there would not – in view of the natural and historic flow in the direction of the homes (whether or not the cemetery is there) there would not be a 'quick and easy answer'.

Mr. Habing said that regarding the complaints of persons smoking, night hours, and visitors to the site, in Gilroy the police are called in response to posted signage. He said the police in Morgan Hill have not been responsive – asked for help with that, as well.

Mr. Habing commented on a condition recommended in the CUP for dealing with buried artifacts or bones. "Burying people is our business," he said. "If we find artifacts or bones on the site, we store them and notify people immediately."

Commissioner Mueller noted that the cemetery is utilizing only a small portion of the east side. "Are you planning on fencing whole east side next to Spring Street?" he asked. Mr. Habing responded, "No. We may put up some type of border, i.e., concrete to replace the curb."

Responding to Commissioner Tanda, Mr. Habing explained the potential for:

- terracing the area with 20% slope
- not putting high headstone on side of hill might be terraced prior proposal
- flat markers placement

Commissioner Davenport expressed concern that the applicant who appeared to have some knowledge of business feasibility stated he was losing money. "It seems that a reasonable person would not jump in thinking they were going to lose money. So what was your business plan?" he asked. "To get a loan if expansion permitted it," Mr. Habing responded. Commissioner Davenport then said, "If your plan was to improve, what was the plan for renovation. The cemetery is acknowledged to be an eyesore now." Mr. Habing argued, "Yes but I've already said it was an eyesore for over 100 years."

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Commissioner Davenport asked, "So what is the projected term of return ~ having this business loser turn into a winner. What is the time frame? Mr. Habing said it was dependent on the amount of improvements put into the cemetery. "We are looking at a well for the irrigation. Hopefully within five years we can see a profit. It really depends on presales. We need to depend on presales. We do not plan on walking always. We bought this place thinking we could make it into a nice looking site. We were under the thought process, actually under the impression that we could move west on the property. The expansion area - seven acres – can serve us a long time, maybe more than five years. My brother and I are very involved. We do not view this as just an investment. Yet it is cynical in a way. The cemetery has potential, but we need help, not restrictions. We have a cemetery and know how to do cemeteries."

Commissioner Mueller expressed confusion: "The applicant told Commissioner Davenport he has a plan and a part of that plan is getting City support for at least some of his requests. Now it appears that if he does not get City help it will be longer than five years before working on the expansion area. I think I heard him tell Commissioner Davenport he would have to get a loan before he could become self sufficient."

Chair Koepp-Baker asked Mr. Habing: "Is the well in or not?" Mr. Habing said it was being put in for irrigation purposes. Chair Koepp-Baker then asked if Mr. Habing had submitted a business plan to the City. He responded, "No, wasn't asked to do so." Chair Koepp-Baker continued by asking, "What is your timeframe for expansion, such as the terracing and completing the water/irrigation project?" Mr. Habing said he was talking about putting in irrigation and expanding two rows over. "We will do that when we get the Use Permit. We can't go any further if we do not get the permit."

Scott Murcay, 16619 Glenn Canyon Ct., addressed the Commissioners and said, "The neighborhood residents are worrying about what the cemetery will look like 30 years from now. We ask consideration as we feel some of this has been 'disengaged' property: it does not look good. Now people on the east side of the cemetery have expressed many concerns with no results, but now the applicant says they want to work with the neighbors. The applicant is asking for assistance, but is not addressing issues already raised and instead has presented new plan. They can't take care of what they have today. How can they be counted on doing what needs to be done in the future?"

Mr. Murcay reiterated the list of concerns the neighbors have brought forth:

- no wish to see tombstones
- water tower not seen; perhaps consideration of relocation
- different size of set back
- need to take care of what they have now if/when get loan
- neighbors ought to be able to be involved in plans and see that all issues are addressed

Linda Rivera, 235 Foothill Cr., said she agreed with the previous speaker, adding that the neighbors should see {firm} plans as new information had been presented at this meeting.

Ms. Rivera said the water drainage problems were not strictly from higher ground: a culvert was blocked off causing water to go down through the subdivision to Belmont St.

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"We really would like to know what will be done to fix the non-endowment area. The owner needs to fix the fence that is so old." Ms. Rivera then said that because of the request regarding City assistance with the cemetery, she and other neighbors had been taken unawares. Ms. Rivera said she and her husband are trying to open a new business and if the applicant gets excused from fees, it seems unfair.

Christina Lacap, 220 Foothill Ct., told the Commissioners her husband had personally contacted the applicant regarding garbage on the site. Ms. Lacap then spoke to the east side of fence which 'has gotten progressively worse' even though she had found the cemetery to be a peaceful place. "I was hoping the applicant would address the issues we had brought forth and let us be part of the solution," she said. "Yet we continue to see trash and see people in cemetery at night. We have concerns about fire hazards." She went on to explain that the residents felt the Planning Commission had a more positive attitude for the neighbors and would encourage that for the applicant as well, but now it seems that the applicant is just here asking the City for help. "We were hoping for a way to have the issues addressed; maybe get the neighborhood together, and now all we hear is concern about his business. Why not get a meeting of the neighborhood together? She asked. "There is no resolution for the issues raised."

Farok Deboo, 16650 Glenn Canyon Ct., told the Commissioners he lives east of the planned expansion. Mr. Deboo read from a prepared statement (on file in the Planning Department), restating previous issues and making suggestions for solution of the myriad of problem and concerns identified, including the need for security, garbage collection and need to see plans before the plans are submitted to the City. Mr. Deboo claimed the applicant has not acknowledged concerns and contacts of the neighbors. Mr. Deboo said he has tried contacted the applicant to no avail has even called the Fire Department and the Department of Agriculture seeking relief from the problems. "We have to wonder if what the applicant says is true as we have had no response when we tried," he said.

Mr. Deboo went on to list concerns regarding:

- fence height
- need for flat markers only
- protection on sloping areas
- need for mitigation for individual homeowners to consider and help plan landscaping
- fence along Spring Avenue has been removed and needs to be addressed, together with a gate being placed

Moria Fainn, 16630 Glenn Canyon Ct., reminded that she had spoken at the previous meeting and had also sent a letter 'with specifics'. Ms. Fainn said all she sees now is the side of a hill but if structures are placed on that hill, it will impact her property values. Ms. Fainn spoke at length regarding issues of:

- location of the easement
- need for the Commissioners not to provide carte blanche for the expansion
- no problem with location of cemetery per se
- maintenance of ground has always been a problem
- somewhat surprised by reaction of neighbors on west side; she is on the west and does not a huge concern
- the applicant's proposal is 'so loose and relies on his honor but no business plan

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is given, so it seems like rules and guidelines should be much more clearly defined'

- overall disappointment but still opportunity for lucrative business to be run in neighborhood if all work together
- felt like nothing had been resolved

Responding to a question from Commissioner Mueller regarding the request to have neighbors involved with landscape plans, Ms. Fainn said she lived where she looks at the side of the hill. "It seems we are restricted by our HOA and City regulations. I would like to participate in a solution, but seems there is much restrictiveness. I would like a landscaped buffer and I think that would be appreciated," she said.

Mr. Deboo returned to the podium to explain that currently he and his neighbors have 'fine views' and fear that minimal or no landscaping would affect their property values. "If tall trees are planted, we would not be able to control the landscaping. We have fine views from where we live now and we want to protect and control," Mr. Deboo said. "We currently have concerns of annual tree trimming – and the site is not well maintained now."

Commissioner Mueller commented that he is familiar with the open space in the area.

John Anhder, 7621 Eglebery St., Gilroy, addressed the Commissioners, saying he works in the funeral business, and has probably spoken with all callers who have made contact regarding this site. Mr. Anhder stressed that it would be nice to have park like area for the cemetery (similar to Los Gatos Memorial Park which is located in a residential area) and said he thinks in such a plan is in the working as he knew what the owner wants to do.

Mr. Anhder listed several problematic issues with the current operation:

- security ~~ Mt. Hope Cemetery is very small and difficult to maintain fencing
- fencing keeps people in and does not encourage police or security patrol
- set backs ~~ must have roads for maintenance
- much of cemetery is not in endowment area
- financials have to be there to make it look good
- few years down the road the site will run out of property

Commissioner Escobar observed that of fundamental concern was the fact that on one hand there is need for presales so the site must be appealing but it sounds as though the applicant is not willing to invest money to encourage people to purchase the presales.

Mr. Anhder agreed, saying: "Yes, there are not good projections but with the expansion area, they would have the property to be sold, and the applicant can go to the bank with firm numbers for land loans and enhancements."

Commissioner Escobar stressed the need to know: with money from a loan what improvements will be put into place, the applicant must be able to explain some investments and at what level. "If the applicant intends to invite pre-sales and address some of the issues raised now the investment of potential must be addressed. There has been talk of putting in a sprinkler system but no specific of what he intends doing. I also find it troubling that the applicant bought the property in 2004. Was the plan then to ask

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the City to contribute? I think we must ask: why now?"

Mr. Habing stood at the podium again saying, "Yes, it is now two years later and we're still losing money." He said he needed to apologize to the neighbors for his 'glib' presentation, explaining that was just his personality. "But you need to understand," Mr. Habing said to the Planning Commissioners, "somehow you've gotten the cart before the horse. If we do not get the CUP, we will close the cemetery."

Commissioner Mueller explained the City is trying to address concerns raised by the neighbors, therefore the Planning Commission must:

- try to get a commitment on what the applicant plans to do
- try to get everything out on table
- try to move forward so neighbors can know what the applicant will do
- have the applicant held accountable

"This is one of the few times we can look at all the issues, and the neighbors have concerns that need to be addressed," Commissioner Mueller said. "It is important that the applicant put into writing his plans and submit those plans to the City. We need to get everything out on the table as we are not particularly happy with what we are going through today."

Chair Koepp-Baker closed, and then reopened the public hearing to permit further discussion.

Ms. Lacap asked, "Could we meet with the applicant or do we have to come before the Commission?" Chair Koepp-Baker said, "No, it does not have to be done here. I would like to see all the neighbors meet with Mr. Habing." She then suggested waiting for such a meeting until the list of how to meet concerns and the request for City intervention of waivers, etc. was provided by the applicant so there would be 'something concrete to deal with'.

The public hearing was closed.

SCE Creer joined in discussion with the Commissioners saying that the issue of drainage had been raised in both this and the previous meeting. "I understand there is some concern of drainage on the east side which appears to have been escalated when Foothill was developed. Public Works has not heard of this issue but suspect now may be a design feature of Foothill Subdivision which should have been designed to alleviate any drainage problems," he said. SCE Creer said that when wet weather occurs in the upcoming winter, Public Works will investigate a possible solution, including – at the request of Commissioner Tanda – maintenance of the site, similar to what the applicant described was being done at the Gilroy cemetery.

Commissioner Davenport questioned SCE Creer: "To your knowledge, Public Works did not know of drainage issues in the area?" SCE Creer responded, "No, and the Foothill Subdivision has been in place approximately 13 years."

Having ascertained the matter had been continued once, **COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO TABLE THE MATTER OF UP-08-07: SPRING-MT. HOPE CEMETERY SO THE APPLICANT CAN MEET WITH NEIGHBORS IN THE VICINITY AND FINALIZE HIS LIST OF REQUESTS TO**

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THE CITY.

Under discussion, Commissioner Lyle commented, "There is a lot about the history of the cemetery that it is important as a quasi public facility at minimum, so the City may bear some responsibility for the condition it is now in. It is important for the City to put on a thinking cap and determine how best to work with this asset."

Commissioner Tanda asked if it would be beneficial to have an inclusion in the motion to have Public Works provide a plan for drainage alleviation, and to further address how maintenance might be done by {maybe} by Public Works? Commissioner Lyle responded that other avenues for service provision might be explored first.

The motion passed (6-1-0-0) with the following vote: **AYES: KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: ACEVEDO; ABSTAIN: NONE; ABSENT: NONE.**

OTHER BUSINESS:

3) ACCELERATING PREVIOUSLY APPROVED HOUSING PROJECTS

Continuation of discussion from the 6:00 PM workshop on the issues, policies and options addressing the cost of below market rate (BMR) housing and other factors that contribute to the local decline in the production of new homes in previously approved housing projects.

PM Rowe gave the staff report, noting that the workshop held earlier this evening had focused on gaining consensus for looking at reducing the number of Below Market Rate (BMR) units with staff having been directed to present some options for achievement of the goal; in conjunction with that a focal point for the City had been assisting homebuilders move projects forward. PM Rowe also reported that there had been emphasis on examining procedures for approving extensions of time as he provided an overview of the current practice:

- City Council approval of development schedules
- Planning Commission approval of development agreements

PM Rowe went on to advise that when it was determined that projects had fallen behind schedule, developers must file application for an updated development agreement or schedule an extension request, necessitated by exceptions granted for extended delays due to EIRs, etc. The City, he said, has determined the inability to obtain financing is cause for granting an exemption and so asks for justification: letter(s) from banks. If other agencies cause delay, the applicant must obtain a letter from the outside agency detailing the cause of the delay. "Now, the City Council would like shorter {time} extensions instead of just granting what the applicant asks for," PM Rowe stated.

PM Rowe further explained that the workshop and this agenda item had resulted from quarterly review consideration of the projects, which were behind schedule, and the Commissioners' wish work to see if other methods could be ascertained to get projects back on schedule.

Commissioner Lyle reminded that *close of escrow* for impact fee payment and other issues had been identified as well. PM Rowe concurred.

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Chair Koepp-Baker opened the public hearing.

Rocke Garcia reminded Commissioners he had been building in Morgan Hill for the past 30 years, lived in and wants to be part of the community. Mr. Garcia had submitted a letter contained in the Commissioner's packet, which was written to the City Council regarding this matter.

Mr. Garcia commenced a recap of some of the issues raised during the workshop and centered many of his comments on the current difficulties in obtaining funding for ongoing/continuing projects. "If the BMR requirements were reduced from 6 to 3 it would help, but not settle the issues," he said. "We are going to continue to struggle because of the marketplace – and the marketplace is ugly, not good at all."

Mr. Garcia gave an example of one particular project where he had purchased an acre of ground for \$156,000 and a like parcel is currently selling for \$111,000 per acre. "So we are asking for some subsidy – no, we are begging for relief and I've put that in my letter," he said.

Commissioner Escobar led discussion of:

- currently in-place improvements
- common costs spread over whole subdivision
- presently being building BMRs
- cost of bundling BMR
- if developers are relieved from building 3 BMRs, what would be the 'break even' point on the remaining BMRs
- market conditions existing today ~ potential impact 24 months down the road
- {of particular interest} by modifying programs today how does that make a project viable by conditions which may not be realized for 2 years down road

Mr. Garcia responded by explaining that the current market conditions substantially reduce developers ability to plan to build.

The Commissioners discussed with Mr. Garcia the existing state of his projects and when building could commence. Factors included in the potential for beginning to build, Mr. Garcia said, were:

- lender's reception to business plans
- existing buying markets.
- new rules for allocations
- weather dependency
- ability to get presales back on track

Other items discussed included:

- projected rate of build out
- time line for building(s) completeness
- developer's asking for City subsidy
- developer's need help now

Dick Oliver, 385 Woodview Ave. #100, addressed the Commissioners, echoing the

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concerns and issues raised by Mr. Garcia. Mr. Oliver also called attention to the need to consider another alternative for projects currently under construction but not sold. "If the City were to reduce the BMR requirements by 50%, then in 2010 have a review and see if it would be feasible to continue the reduction or continue as now – much depends on the marketplace," Mr. Oliver stated.

Responding to questions from the Commissioners, Mr. Oliver addressed:

- the 'affordable set aside'
- asking builders to incorporate 'green provisions' into plans {many already doing so}
- temporary relief with reduced BMR requirements would be incentive for building community to get 'something started' determine after a year 'what happens'
- possible effect if 'downtown starts to go'
- size of BMR units; not replacing with big houses but more affordable
- can't control market / lending institutions and the economy are major issues now: increased qualifications now being put on by lending institutions [example: Alicante phase3B already approved, have streets, curbs and gutters in but must sell 2 - 3 more houses for more lending]
- active sales stopped cold some months ago
- when approval given, developers still need about 3 months to get started again
- land agent appraisal process
- reduction in BMR requirements by 50% could result in faster starts

Commissioners discussed several issues with Mr. Oliver, including:

- when work could commence following pulling permits
- number of BMRs to be considered
- 'break even point' for BMRs
- current inventories

PM Rowe advised that City records show that for the entire City, the inventory of completed but unsold homes last month was 24. However, he said total accuracy was difficult, as some completed buildings had been turned into rentals.

Mr. Oliver spoke on the difficulties of sales in view of having people ready to move in, but they were waiting for financing completion. "Some have fallen out of escrow this year," he said. Mr. Oliver said he had four units under contract – but they have been under those contracts for several months.

Scott Schilling, 16060 Caputo Dr., #160, told the Commissioners that his Madrone Plaza project would be specifically affected by a positive reduction in the BMR requirements. "We have a 78 unit project map which was approved 18 months ago. The off-site and on-site improvements have been completed as well as other amenities," Mr. Schilling said. "We are partnering this project with South County Housing and they have 95 units, which they are half way through. By eliminating 1 BMR unit immediately we would be allowed the ability to go forward on 18 units now. Eliminating the BMR requirement would be a huge help."

Mr. Schilling said, "A lower price product can be considered so when we are dealing with buyers below a \$130,000 income maybe RDA could provide partnership and the City

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consider some incentives for building with the RDA getting their money back at the time of sales. Any programs would help. Eliminating even one BMR would be good for the builders. At this point we are open to anything. I would like to temporarily eliminate BMRs in this initial phase.”

Chair Koepp-Baker asked Mr. Schilling’s reaction to the suggestion for temporary reduction of BMR requirements follow by a review after a year to consider the viability of the reduction to the program.

“I would have absolutely no problem looking at it in a year,” Mr. Schilling declared.

Chair Koepp-Baker emphasized the importance of open dialogue in this matter, and declared the public hearing closed and acknowledged commencement of a workshop environment to enhance discussion.

Commissioners and members of the audience discussed:

- for Mr. Schilling: the number of units possible for beginning construction this year
- loss of BMRs to the City
- sizes and prices of BMRs currently {data contained in staff report}
- adding green builder points to the scoring system for upcoming competitions

City Manager Tewes joined the discussion, explaining the exhibits contained within the staff report, which had been prepared at his request. “Many of the projects in Exhibit E which are stalled account for the majority of the BMRs,” he said. City Manager Tewes went on to provide an overview of the various exhibits in the staff report that detailed the effects of BMR reductions for all projects currently on record.

Mr. Oliver said he fully supported the suggestion of paying the balance of fees – in lieu of building BMRs -with ‘green building’.

Responding to Commissioner questions, PM Rowe advised that staff would clarify numbers in the various exhibits (contained in the staff report) for accuracy of totals. Considerable discussion ensued regarding the totals as presented, with clarification provided by Mr. Oliver and City Manager Tewes.

Mr. Oliver clarifies shared area on Exhibit E

Commissioner Lyle expressed concerns that some of projects listed in Exhibit A were not stalled (2009-10) but had been listed as such. It was also pointed out that Exhibit A included projects not requiring BMRs. Commissioner Mueller stressed the need to look at the data in terms of practical build out, and saying that there would actually be a small number of BMRs needed for inclusion while the need to look at bare land for development exists.

Commissioner Acevedo asked if - when the numbers come back – there was inclination to also give breaks to projects which had not yet broken ground. Commissioner Lyle expressed his understanding that the breaks would only be available to developers within a

certain period.

Commissioner Escobar agreed, saying, "My reaction is that the whole reason is to kick starting development programs for the short term. There would be violation of integrity if the deadline were extended for new developers who bought after that initial program. Commissioner Acevedo said it would be necessary to make that policy very clear.

Commissioner Mueller reminded that one thing the Commissioners and the Council had been talking about for the 2010-11 competition was: all would be competing under Measure C. Commissioner Mueller further called attention that everyone with projects submitted for the 2010-11 competition must meet their BMR commitments in their applications.

Other issues/concerns discussed were:

- * 3% drop in the requirement for BMRs would present a more equitable playing field
- * crucial question: reduction of BMR numbers must be viable to look at after one year and then revisit currently proposed decision
- * need to make policy clear when developers make application
- * if they get ELBA, 'tough'; must still pull permit
- * need for agreement to policies when signing development agreements
- * need to make sure all projects taking part in agreement, must have specified time frame noted in the development agreement
- * Staff needs to apprise and provide information (reduction in BMR requirements) of impact on City

Mr. Garcia reminded that the proposal presented low and median units. He requested 4% median and 2% low. Director of Business Services Toy is to provide numbers for those categories.

Commissioner Tanda said he would like to see what criteria is before going into a suggestion of reducing requirements for BMRs 50% downward because of conditions which could be quantified at the end of the year. "We need to look at conditions which could be measured then as they are now," he said. Commissioner Tanda then discussed meeting the City's policy on the General Plan of BMR numbers, saying he still thought them to be very small. "I think when we get the figures back there may not be reason enough for number adjustment. I am concerned about consistency," he said.

Commissioner Mueller said it would be important when asking for existing sales; the City should also look at the available resale inventory numbers and any other pertinent information available.

The causes for ELBA were discussed.

Commissioner Lyle remarked there are currently a 'whole lot of market rate, bank owned homes in the City.

Commissioners discussed:

- staff taking a look at quantitative data, percentage sales, new starts compared with historical data to evaluate this year and next year for determining aberrations which would justify the reduction of BMR requirements by the City

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- more detailed substantiation from developers when asking for extensions, e.g., letters from banks
- Council's wish to be concerned with shorter extensions
- possibility of limiting extensions
- developers generally have been responsible
- continued evaluation might result in other modifications being made

Commissioner Mueller said it would be best to tell the developers about the City's stance on requesting for more concrete documentation so they will not be surprised. He continued by saying, "As the market gets better, options on how to manage building units need to be studied. We can't take from non-performing but ability to 'swap' is there. However, no one using that mechanism now so it cannot be considered a viable tool."

Commissioner Lyle said, regarding the 2010-11 competition, he would advocate a stronger letter from banks would be beneficial so the City knows what they can do to not to get more people in the current situation.

Commissioners and Planning Staff discussed:

- The City Manager, in a report to the City Council of the projects in the upcoming competition, will identify needs to be evaluated.
- Commissioner Acevedo pointed out the developers has a responsibility to look those items as well.
- PM Rowe was requested to communicate with the developers.

Evaluations for determining the viability of applications for the upcoming competitions were discussed, including the potential for requirement of letters of interest from banks. Commissioner Mueller reminded that construction loans depend on appraisals 'out a couple of years'.

Commissioner Mueller said that part of the quarterly report should show some sales data and a future refinement such as Exhibit A/Item 3 of the Staff report this evening. Other Commissioners agreed and PM Rowe advised that the upcoming quarterly reports will have more substance to the reports, including considerable additional information.

ANNOUNCEMENTS: None

CITY COUNCIL REPORTS

The City Council considered and took action:

- accepted senior housing definitions
- Monterey Genter project approved
- Approved development agreements for
 - * Wright Avenue
 - * Ginger Custom One reconsidered
- held discussion regarding need for better documentation when requests for extension are made

ADJOURNMENT:

Noting that there was no further business for the Planning Commission at this meeting, Chair Koepp-Baker adjourned the meeting at 10:12 pm.

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MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk